THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.6474 OF 1995

DATE: 31-10-2006

Between:

Madarapu Komuraiah .... Petitioner

And

1. The District Cooperative Officer,
Warangal District, Warangal and 2 others .. respondents

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.6474 OF 1995

ORDER:

In this writ petition the proceedings of the 3rd respondent dated 15.2.1995, whereby a sum of Rs.26,865/- being the excess salary drawn by the petitioner as the Paid Secretary of P.A.C.S, Damera was sought to be recovered, is impugned. The erstwhile President of the Society, vide proceedings dated 14.9.1994, implemented the revised pay scales of 1991 and fixed the pay scales of the petitioner at Rs.264-704. The petitioner was permitted to draw arrears of salary from the funds of the society with effect from 1.1.1991 and it was held that he was eligible to the increased scales on par with the Supervisory V cadre of the District Co-operative Central Bank. On completion of the term of the President a Special Officer was appointed and, vide proceedings dated 15.2.1995, the Special Officer held that the orders in Government Memo No.1566 dated 14.10.1991 were not applicable and that the petitioner was not eligible to draw his salary on the following grounds:

(1) The petitioner was not a Cadre Secretary and his appointment was made by the Managing Committee;

(2) There was no proper sanction for his appointment and his services were not governed by any service rules of the society and the Government;

(3) The order in Government Memo dated 14.10.1991 was not applicable to the petitioner since he was not a cadre

secretary;

(4) Despite clear instructions of the Commissioner of Cooperation and the Registrar of Cooperative Societies not to enhance the salaries of the paid clerks, and any other society employees, the petitioner's salary was revised;

(5) The Financing Bank i.e, Indian Overseas Bank, Hanamakonda had issued instructions not to enhance the salaries of employees particularly to the petitioner as there was no approval from either the Financing Bank or from the Government for enhancement of his salary

It is also stated that enhancement of salary in the revised pay scales was in violation of rules and instructions issued by the District Cooperative Officer, Warangal and Indian Overseas Bank, Hanmakonda and that the Divisional Cooperative Officer had issued instructions to the 3rd respondent to re-fix the salary of the petitioner and to maintain status quo, vide proceedings dated 14.2.1995. As such it was resolved on 15.2.1995 to fix the salary of the petitioner at Rs.1279-00 in accordance with the instructions issued by the Divisional Cooperative Officer and the petitioner was permitted to draw salary of Rs.1279/- with effect from 1.8.1994 i.e, the salary he was drawing prior to enhancement under the revised pay scales. The petitioner was directed to remit the excess salary drawn by him to the account of the P.A.C.S, Damera i.e., a sum of Rs.26,865/- within seven days from the date of receipt of copy of the order.

Sri B.Narayana Reddy, learned counsel for the petitioner, would submit that the impugned order is in violation of principles of natural justice and as such is liable to be set aside. Learned counsel would submit that, without giving the petitioner an opportunity of being heard, a sum of Rs.26,865/- was sought to be

recovered and since the order was in gross violation of principles of natural justice, the said order is liable to be set aside.

Learned Assistant Government Pleader for Cooperation, on the other hand, would submit that since the respondent – society is not an instrumentality of the State under Article 12 of the Constitution of India, the writ petition as filed is not maintainable. She would place reliance on a Full Bench judgment of this Court in **Sri Konaseema Co-operative Central Bank Ltd, Amalapuram v. N.Seetharama Raju**[1]. Learned counsel would further submit that the very appointment, of the petitioner and his being conferred the benefit of revised pay scales, was contrary to Section 116 (c) of the A.P. Cooperative Societies Act. Learned counsel would state that the proceedings of the President dated 14.9.1994 were found to be irregular and was not in accordance with the rules. She would submit that there was no sanction for his appointment in the society and that the society had not obtained approval for the appointment, that no service conditions were registered and that the order of the Government, in its memo dated 14.10.1991, did not apply to the services of employees appointed by societies as it applies to only cadre secretaries who were appointed by the District Common Cadre Selection Committees. Learned counsel would submit that the petitioner did not fall under the category of cadre secretary as he was not appointed by the Committee and as such his claim for revised scales, in accordance with Government Memo dated 14.10.1991, was not tenable. Reference is also made to the fact that the President of the Society, while issuing the impugned proceedings dated 14.9.1994, had clearly stated that in case the fixation of the petitioner's pay was found erroneous at a

later date, the whole sum paid in excess should be recovered from him and restored to the society. Learned Assistant Government Pleader would submit that, since the very order dated 14.9.1994 wherein the petitioner was given the benefit of revised pay scales clearly stipulated that in case the fixation was found erroneous later the amount was liable to be recovered and since the pay scales was erroneously fixed, by virtue of the very same proceedings dated 14.9.1994 the respondents were justified in seeking to recover the amount. Learned Assistant Government would rely on the averments in the counter affidavit filed on behalf of the respondents that the President and the Managing Committee of the Society had failed to obtain prior sanction under Section 116(c) of the A.P. Cooperative Societies Act for fixing of the staff pattern and pay scales and had failed to adhere to the instructions of the Financing Agency and the Divisional Cooperative Officer with regards sanction of pay scales. Learned Assistant Government Pleader would emphasize that the action of the respondents in seeking to recover the amount was justified.

While there is considerable force in the submission of the learned Assistant Government Pleader that in view of the law laid down by the Full Bench, in Sri **Konaseema Cooperative Central Bank**[1], the writ petition itself is not maintainable, even on merits, I see no reason to interfere with the impugned proceedings dated 15.2.1995. The fact remains that the petitioner herein was appointed as a Paid Secretary and the Government Memo dated 14.10.1991, based on which his pay scales were revised, does not apply to the post in which the petitioner was working and the fixation of his pay scales was therefore contrary to the instructions in this regard both by the statutory authority and by the Financing

Bank. Further in the very order dated 14.9.1994, whereby he was given the benefit of revised pay scales, it is clearly stipulated that in case the fixation was found to be erroneous he was liable to remit the amount. The order of the 3rd respondent dated 15.2.1995, calling upon the petitioner to remit the excess amount paid, cannot be faulted. It is well settled that unless prejudice is shown to have been caused mere violation of principles of natural justice would not necessitate interference by this Court under Article 226 of the Constitution of India. In the case on hand, it is not in dispute that the very fixation of pay scales, under the proceedings dated 14.9.1994, was contrary to the rules and that the benefit was extended to the petitioner relying on a Government Memo dated 14.10.1991 which, in fact, was not applicable to the petitioner. Extension of the benefit of fixation of pay scales to the petitioner was contrary to the specific instructions of the Financing Bank and the statutory authorities concerned. It is not even the case of the petitioner, before this Court, that the action of the respondents in issuing the impugned proceedings dated 15.2.1995 is contrary to any rule or government orders in this regard. In such circumstances merely because the petitioner was not put on notice, prior to the impugned order dated 15.2.1995 having been passed, would not necessitate interference by this Court under Article 226 of the Constitution of India.

Sri B.Narayana Reddy, learned counsel for the petitioner, would, however, submit that the petitioner is receiving a meagre salary and if the entire amount of Rs.26,865/- is sought to be recovered in one lumpsum, the petitioner would suffer irreparable loss and injury. Learned counsel would seek indulgence of this

Court to permit the petitioner to repay the amount in installments. It is not for this Court to issue a mandamus in this regard. If the petitioner submits a representation to the respondents herein seeking permission to repay the excess amount paid to him earlier, in easy installments, I have no reason to believe that the respondents would not consider his case sympathetically and grant him permission to do so.

I see no reason to interfere with the impugned order. The writ petition fails and is accordingly dismissed. No costs.

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31-10-2006

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[1] AIR 1990 AP 171